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Right to adequate housing

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living and on the right to non-discrimination in this context, Ms. Raquel Rolnik, submitted in accordance with Human Rights Council resolution 15/8, paragraph 2 (h).

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Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living

Summary

The present report focuses on the realization of the right to adequate housing in post-disaster settings. The report assesses human rights standards and guidelines relevant to an approach to disaster response based on the right to adequate housing and discusses some existing limitations. It elaborates upon key challenges relating to the protection and realization of the right in disaster response: inattention to or discrimination against vulnerable and disadvantaged groups; the overemphasis on individual property ownership and the associated difficulty to recognize and address the multiplicity of tenure forms equally in restitution and recovery programmes; the risks of approaching post-disaster reconstruction predominantly as a business or development opportunity that benefits only a few; and limitations in existing frameworks for reconstruction and recovery. The report concludes by outlining the fundamentals of an approach to disaster response that deliberately and comprehensively integrates the right to adequate housing.

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I. Introduction

1. The present report focuses on the realization of the right to adequate housing in post-disaster settings. It should be read in conjunction with the report submitted to the Human Rights Council (A/HRC/16/42), in which the Special Rapporteur discusses common issues relevant to both post-conflict and post-disaster settings.

2. While many commonalities exist across post-conflict and post-disaster situations, some challenges are specific to the latter and require different responses. The Special Rapporteur chose to focus on disasters, in the light of the increasing prevalence of disasters worldwide that have more devastating effects than ever before,[1] the likelihood that this trend will continue as a result of climate change, rapid urbanization and population growth, and the comparatively fewer experiences and guidelines available to address issues related to the right to adequate housing in the wake of disasters, compared to post-conflict settings.[2] The Special Rapporteur also had the opportunity to conduct a working visit to Haiti (8-11 June 2011) to assess reconstruction and relief efforts in the wake of the earthquake of January 2010, which greatly informed her thinking for the present report and highlighted the need to focus on disasters.[3]

3. Taking an approach to post-disaster and recovery-based reconstruction on the right to adequate housing has significant implications. The Special Rapporteur is concerned that disaster relief and recovery efforts have so far, with notable exceptions, taken a narrow view of what constitutes the right to adequate housing, on some occasions leading to violations of the right. Section I of the present report assesses relevant standards. Sections II to V elaborate upon key challenges. The report concludes by outlining the fundamentals of an approach to disaster response that deliberately and comprehensively integrates the right to adequate housing and provides recommendations for follow-up measures.

II. Assessment of the legal and policy framework applicable to natural disasters

4. While there are a number of standards and guidelines relevant to ensuring the right to adequate housing in post-disaster situations, they are often understood and applied in a fragmented manner.[4] There are other more specific limitations too, as will be discussed.

5. The right to adequate housing is most clearly recognized by the International Covenant on Economic, Social and Cultural Rights (article 11). The Committee on

[1] International Disaster Database, http://www.emdat.be.

[2] The present report will nonetheless draw from examples in post-conflict settings, when relevant and applicable to post-disaster situations, and in the absence of documented examples in disaster situations.

[3] The Special Rapporteur would like to reiterate her thanks to the United Nations Stabilization Mission in Haiti, the Office of the High Commissioner for Human Rights and the United Nations Human Settlements Programme, which facilitated her visit.

[4] Human rights challenges in conflict and post-conflict settings have received more attention and the relevant standards have been further elaborated upon than in post-disaster situations. In addition to the standards discussed here, post-conflict responses would also be guided by international humanitarian law, refugee law and standards pertaining to remedies and reparation.

Economic, Social and Cultural Rights underlined the importance of interpreting the right in broad terms, identifying seven aspects of the right that States must progressively realize: security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.[5] All the aspects and safeguards pertaining to eviction and resettlement derived from the right[6] are relevant to disaster response, as are the human rights principles of participation and non-discrimination and equality.[7]

6. However, existing guidance with respect to disaster situations has given little attention to the right to adequate housing. When reference to the right is made it is limited, with the right narrowed down to the need to provide shelter, housing or to aspects related to protection.[8] The few attempts to discuss the right in a more comprehensive manner have remained at the level of an individual organization's guidance and not in the form of authoritative policies of broad application.[9] Equally, United Nations human rights mechanisms have, with notable exceptions, not addressed the specificities of disaster situations and their impacts on the enjoyment of the right to adequate housing or other human rights, remaining at the level of generalities.[10]

7. Instead, most initiatives to address disasters from a human rights perspective have taken place with respect to specific groups, notably internally displaced persons and refugees. The Guiding Principles on Internal Displacement are essential in this regard. They have been recognized as a significant international framework for the protection of internally displaced persons in both post-conflict and post-disaster situations.[11] While attention was at first geared to the protection of internally displaced persons in conflict and post-conflict situations, in recent years policy and operational guidelines have also been developed with respect to natural disasters, expanding the scope of application to all persons affected by disasters, including but not limited to internally displaced persons. The Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disasters (Inter-Agency Standing Committee Guidelines) is an important document in this regard.[12] The Guidelines and the above-mentioned Guiding Principles recognize the right of persons displaced by conflict or disaster to durable solutions, namely, a return to their homes or places of habitual residence (and, as

[5] See Committee on Economic, Social and Cultural Rights, General Comment No. 4, on the right to adequate housing.

[6] See Committee on Economic, Social and Cultural Rights, General Comment No. 7, on forced evictions; see also "Basic principles and guidelines on development-based eviction and displacement" (A/HRC/4/18, annex 1).

[7] Participation was discussed in the previous report to the Human Rights Council. Section III of the present report discusses non-discrimination.

[8] For example, in the Inter-Agency Standing Committee Operational Guidelines on the Protection of Persons in Situations of Natural Disaster, reference to adequate housing is made under C.2.1 but not in other potentially relevant provisions.

[9] See Erica Harper, *International Law and Standards Applicable in Natural Disaster Situations* (Rome, International Development Law Organization, 2009).

[10] The Representative of the Secretary-General on the human rights of internally displaced persons is among the exceptions. See observations by United Nations treaty bodies and special procedures, Universal Human Rights Index, http://www.universalhumanrightsindex.org/en/index.html.

[11] The legal database on the Guiding Principles attests to their wide recognition. See http://www.idpguidingprinciples.org/.

[12] First issued in 2006, a revised version was published in 2011.

key condition for durable return, to have housing or land restored to them), relocation elsewhere or local integration.[13]

8. The 2005 Principles on Housing and Property Restitution for Refugees and Displaced Persons[14] ("Pinheiro Principles") go one step further by recognizing a distinct "right to restitution" (covering housing, land and/or other property) for refugees and displaced persons.[15] An important question is whether the Pinheiro Principles apply to post-disaster situations. The intention seemed to have been that they should apply, the central idea behind principle 1.2 being that people who are displaced — regardless of the reason for their displacement — are similarly situated and have a right to return to their places of habitual residence and thereby to restitution. On that basis, some interpret the Principles as applicable to all situations of natural disaster.[16] However, others point out that the Principles are explicitly limited to the "arbitrary or unlawful deprivation" of people's former homes, land or places of habitual residence following displacement.[17]

9. This is not to say that the Pinheiro Principles are irrelevant to natural disaster situations. First, they fully apply in actual cases of arbitrary or unlawful deprivation or destruction of housing or land occurring in post-disaster situations, including, arguably, when displaced persons are denied their right to return to their homes (see section IV below), and in cases of unreasonable State failings with respect to disaster preparedness, mitigation or early warning systems.[18] Second, taken as a specification of existing standards pertaining to the rights of displaced persons and refugees to return to their homes, the Principles provide relevant guidance on how best to manage the technical and legal issues associated with housing, land and property restitution, guidance which has since been reflected to varying degrees in policy and practice.

10. Thus, an approach to disaster response that fully integrates the right to adequate housing would combine all the above sets of standards and principles and have at its core the various elements of the right to adequate housing. The recommendations in the final section of the present report propose the integration of those standards within a consolidated, conceptual and operational framework.

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[13] Guiding Principles on Internal Displacement, principle 28; Inter-Agency Standing Committee Guidelines, D.2.2, D.2.3.

[14] Sub-Commission on the Promotion and Protection of Human Rights, resolution 2005/21.

[15] Principle 2.2. See also the seemingly unsettled debate as to whether there is a self-standing right to property restitution under international law: Malcolm Langford and Khulekani Moyo, "Right, remedy or rhetoric? Land Restitution in International Law", *Nordic Journal of Human Rights*, vol. 28, No. 2 (2010). For the purposes of the present report, however, the Special Rapporteur is satisfied that the right to property restitution is an essential element of the right to remedy and reparation and to the right of refugees and internally displaced persons to return to their places of origin and habitual residence.

[16] Harper, *International Law*, chapter 4 (see footnote 9 above).

[17] Principle 1. See, among others, Charles Gould, "The Right to housing recovery after natural disasters", *Harvard Human Rights Journal*, vol. 22 (2009); Rebecca Barber, "Protecting the right to housing in the aftermath of natural disaster: standards in international human rights law", *International Journal of Refugee Law*, vol. 20, Issue 3 (2008).

[18] European Court of Human Rights, Budayeva and others v. Russia, 29 September 2008; Supreme Court of Pakistan, Floods Commission case, 7 June 2011, available from http://www.supremecourt.gov.pk/web/page.asp?id=735 (accessed 24 July 2011).

III. Discrimination and vulnerability: compounding factors in the impacts on and responses to disasters

11. Vulnerability is widely recognized as an important element in disaster risk reduction and management.[19] The most vulnerable, such as those living in poverty or with insecure tenure, are more likely to live in disaster-prone land; they are also at greater risks of displacement and loss of livelihood in the event of a disaster; and they will recover with more difficulty from the disaster.

12. On many occasions, vulnerability is compounded by direct or indirect discrimination, impacting on the ability of individuals and communities to protect themselves from disasters and to recover. The relevance of discrimination to disasters and disaster response may not be immediately apparent. Indeed, the term "natural disaster" could be taken as precluding responsibility, which may imply, in turn, the impossibility of discrimination. However, it is well accepted that the magnitude of impacts and distribution of losses from natural hazards are to a large extent man-made (see A/60/227). Disaster preparedness, mitigation and response are all subject to or conditioned by State action or omission, and may therefore be discriminatory.

13. The principles of equality and non-discrimination are firmly rooted in international human rights law. Attention to non-discrimination and equality requires Governments and aid organizations to pay particular attention to vulnerabilities and inequalities in pre-disaster contexts, and, in the aftermath of disasters, to address inequalities and protect the most vulnerable. United Nations treaty bodies have noted that even in times of severe resource constraints — as is typically the case in the wake of a disaster — States have a particular obligation to protect vulnerable members of society.[20] States should also take special measures to secure for disadvantaged groups the full and equal enjoyment of their human rights.[21] In post-disaster situations, such measures might translate into special assistance to support return of the most vulnerable groups or find land/housing for landless or homeless families.

A. Disadvantaged groups most affected by disasters

14. When Hurricane Katrina struck New Orleans in 2005, African Americans and poor people (with the two categories to a large extent blurred)[22] bore the brunt of the devastation because, for the most part, they lived most often in the lower-lying, more flood-prone sections of the city. In addition large numbers of the metropolitan area's population (being generally poor) lacked the means to escape the flood.[23] The

[19] See General Assembly resolution 64/200.

[20] Committee on Economic, Social and Cultural Rights, General Comment No. 3 on the nature of States parties obligations, article 2 (1) of the Covenant. See also concluding observations by the Committee on the Rights of the Child with respect to disasters, for instance, CRC/C/MOZ/CO/2, CRC/C/PHL/CO/3-4.

[21] International Convention on the Elimination of All Forms of Racial Discrimination, article 1 (4); Convention on the Elimination of All Forms of Discrimination against Women, article 4.

[22] No less than 84 per cent of the city's poor population was African-American. The Brookings Institution, "New Orleans after the storm: lessons from the past, a plan for the future" (2005), p. 6.

[23] Ibid., p. 13.

particular impacts and costs of the hurricane were therefore intimately linked to pre-existing social, economic and land use patterns, directly related to housing and urban planning policies.

15. In Honduras, in the wake of Hurricane Mitch in 1998, the groups disproportionately affected included poor women, peasants and indigenous groups, many of whom had been living under insecure tenure conditions and in vulnerable areas exposed to strong winds, flooding and landslides (see A/HRC/16/42, para. 32). In Colombia, the floods throughout 2010 and into 2011 were said to have disproportionately affected those already displaced by conflict, particularly indigenous and Afro-Colombians, who tended to live in remote areas subject to violence from armed groups.[24]

16. In the aftermath of the Pakistan floods of 2010, it was acknowledged that the poor and vulnerable bore the brunt of the catastrophe, having no assets or safety nets. Those who were displaced by the floods and lost their assets and means of livelihood consisted disproportionately of landless tenants and labourers, living in non-/semi-permanent housing.[25]

B. Neglect and discrimination made visible by disasters

17. The earthquake in Haiti exacerbated and made visible a hitherto relatively invisible problem, namely, the dire conditions characterizing informal settlements in which the majority of the Port-au-Prince population lived.[26] The settlements, as many others elsewhere, had been created spontaneously and had never been recognized formally by the authorities. They had no or little access to basic infrastructure and services. With the earthquake, many of the residents moved to camps, either because their homes or neighbourhoods had been destroyed or damaged, or in order to be able to receive food or medical assistance, to take part in cash-for-work programmes, to save on rent (in the case of renters) or in the hope of receiving a house.

18. Sixteen months after the earthquake, there were still 634,000 people in over 1,000 camps. Observers noted that the camp populations were declining more slowly than in 2010, suggesting that people had nowhere else to go or had decided that however precarious their situation in the camps, it was still better than their

[24] Elizabeth Ferris and Daniel Petz, *A Year of Living Dangerously: A Review of Natural Disasters in 2010* (London, The Brookings Institution – London School of Economics, 2011), p. 19. The Special Rapporteur welcomes information received from the Government of Colombia on the range of actions taken to address the effects of La Niña, such as the establishment of the "Fondo de Adaptación" charged to identify and manage projects aimed at finding durable solutions, including mitigation and preventing strategies.

[25] Government of Pakistan, Asian Development Bank and World Bank, *Pakistan Floods 2010: Preliminary Damage and Needs Assessment*, p. 68; Oxfam, *Land Rights and the Indus Flood, 2010-2011: Rapid Assessment and Policy Review* (Oxford, OxfamGB, 2011). The Special Rapporteur acknowledges the scale of the challenge faced by the Government and its efforts in handling relief and recovery, particularly the initiation of the Watan Card, which being non-discriminatory between landowners and the landless, encouraged all to return home.

[26] It is estimated that before the earthquake 80 per cent of the Port-au-Prince population lived in informal settlements, on only 20 per cent of the land.

situation of origin.[27] The earthquake thus highlighted long-entrenched patterns of discrimination and neglect. Disasters elsewhere have had similar effects.[28]

C. Recovery responses overlooking or discriminating against the most vulnerable

19. Recovery efforts, by overlooking or directly discriminating against some groups, can perpetuate and even reinforce pre-existing patterns of vulnerability and disadvantage. This is often the case with women. In the wake of the 2004 Indian Ocean tsunami, it was reported that the international response on many occasions strengthened "those who were better off and/or more articulate ... while marginalizing those who had few assets, notably women".[29] Relief efforts and policies, for instance, excluded women from livelihoods assistance and on occasion directly undermined women's pre-existing rights, such as their rights to housing or land in matrilineal communities.[30] When women also happen to have insecure tenure — as they often do because their access to housing and land frequently hinges on a relationship with a man, or because they face additional hurdles as sole head of a household, they are particularly vulnerable.[31]

20. Disaster response appears to differ greatly according to whether it addresses the situation of individual, formally registered, property owners or that of all those with other types of tenure arrangements. It has been noted that in most housing reconstruction programmes, tenure documentation and legal proof of rights are prerequisites for establishing beneficiary eligibility, with the consequence of excluding the poorest and most vulnerable, including those residing in informal settlements with temporary or informal rights of tenure.[32] In a number of countries, displaced renters and squatters often find themselves excluded from permanent housing schemes designed to replace the assets of homeowners.[33]

21. Similar limitations have been seen in post-disaster needs assessments. While conditions pertaining to tenure and land ownership may be discussed and recognized as important at the level of principle, they are not always addressed in policies, strategies and sectoral priorities in practice. For instance, in the disaster needs assessment carried out by international financial institutions and the Government of Pakistan following the floods, the proposed housing and reconstruction strategy

[27] International Organization for Migration, displacement tracking matrix, May 2011.

[28] Oxfam, *Land Rights and the Indus Flood*, p. 3 (see footnote 25 above).

[29] John Telford and John Cosgrove, *Joint Evaluation of the International Response to the Indian Ocean Tsunami: Synthesis Report* (London, Tsunami Evaluation Coalition, 2006), p. 104.

[30] Michael Lyons and Theo Shilderman, eds. *Building Back Better: Delivering People-Centred Housing Reconstruction at Scale* (London, Practical Action, 2010) (with respect to communities in Sri Lanka); ActionAid, "Tsunami response: a human rights assessment" (2006), pp. 43-47.

[31] Following Hurricane Katrina, women were particularly affected by the lack of affordable/public housing since prior to the storm they had headed the majority of public housing and voucher-subsidized households. See Ferris and Petz, *A Year of Living Dangerously* (see footnote 24 above).

[32] See World Reconstruction Conference: Recovering and Reducing Risks after Natural Disasters: Proceedings (Geneva, May 2011), p. 31.

[33] See report of the United Nations Special Envoy for Tsunami Recovery, William J. Clinton, "Key propositions for building back better" (2006); (Hakan Arslan and Cassidy Johnson, "Turkey: can small actors overcome the absence of state will?", in *Building Back Better: Delivering People-Centred Housing*, Lyons and Shilderman, eds. (see footnote 30 above).

made no mention of land ownership or tenure issues, but only focused on the techniques and costs of housing reconstruction. In addition, policy priorities for other sectors relevant to land, such as agriculture, were said to favour landowners.[34]

22. Often, multiple factors of vulnerability and discrimination have a compounding effect. Post-Katrina responses by the federal and state governments in the United States generally were found lacking when it came to supporting lower-income renters — predominantly African American — and addressing the range of obstacles that prevented them from accessing affordable housing.[35] Despite a federal programme of housing vouchers, in practice, families with rent vouchers had difficulties finding rental units. Reasons included public and rental housing shortages (due to storm damage but also to subsequent decisions to massively cut down public housing), rent increases, discrimination by landowners,[36] the slow pace of rental housing construction and the decision by states in the Gulf coast to direct the bulk of federal funds towards repairing homeowner units rather than rental ones.[37] With a very limited option to rent, an important number of families were de facto denied return to their city and former homes;[38] which resulted in a rise in homelessness.[39]

23. The above examples show how discrimination, as much as vulnerability, is a key factor bearing upon disaster impact and response. Discrimination based on tenure status highlights a broader problem, namely the reluctance or inability of Governments, international and national organizations alike to adequately recognize and protect all forms of tenure equally.

IV. Recognizing and protecting all forms of tenure equally, from restitution to durable solutions programmes

24. The Special Rapporteur notes the centrality of tenure security in the right to adequate housing. Tenure security does not equate to a right to private ownership,[40]

[34] Oxfam, *Land Rights and the Indus flood*, pp. 24 and 25 (see footnote 25 above); Government of Pakistan and others, *Pakistan Floods 2010*, annexes on housing, agriculture and the financial sector (see footnote 25 above). See also part III of the present report for a discussion on tenure/land assessments.

[35] See Advisory Group on Forced Evictions, "Mission report to New Orleans", 26-31 July 2009, and A/HRC/13/20/Add.4, para. 30. A total of 90 per cent of neighbourhoods dominated by public housing were populated by African-Americans, of which 80 per cent were renters in those areas. See Ferris and Petz, *A Year of Living Dangerously*, p. 74 (see footnote 24 above).

[36] The Special Rapporteur welcomes the information received by the Government of the United States of America and concerning the measures undertaken by the Government, including by the Department of Housing and Urban Development, to combat housing discrimination by private and public actors and, inter alia, its measures to combat systematic discrimination caused by restrictive zoning or rental ordinances that discriminate against African-Americans, such as ordinances passed by St. Bernard's Parish after the hurricane.

[37] United States Government Accountability Office, *Disaster Housing: FEMA needs more detailed guidance and performance measures to help ensure effective assistance after major disasters*, 2009, pp. 11-13; "4 Years After Katrina: Housing crisis continues, low-income renters face discrimination", *Facing South*, 21 August 2009.

[38] Ferris and Petz, *A Year of Living Dangerously*, p. 74 (see footnote 24 above).

[39] Advisory Group on Forced Evictions, "Mission report", p. 5 (see footnote 35 above).

[40] In some circumstances, private ownership may in fact not be the most appropriate way to ensure tenure. See A/HRC/10/7.

nor is it limited to the conferral of formal legal titles. There is a multiplicity of legitimate tenure arrangements besides private ownership,[41] such as public or private rental accommodation, cooperative housing, lease, occupation/rent of land or property in informal settlements, and other user or occupancy rights through customary or traditional arrangements all with varying degrees of formality.[42] It follows that only a minority of victims of natural disasters may in effect have individual, formally registered, ownership rights to their housing or land.

25. Nevertheless, the Special Rapporteur is concerned that policy and practice in post-disaster settings are skewed towards individual private ownership, as already shown in section III above. Section IV will focus on policy and practices pertaining to restitution and more broadly to durable solutions and reconstruction, as illustrations of the tensions between individual property ownership and other forms of tenure in practice.

A. Towards an expansive notion of housing and property restitution

26. The right to housing and property restitution has found its most specific elaboration in the Pinheiro Principles. At the time of their adoption the Principles responded to an obvious need for guidance on the procedures and mechanisms necessary to facilitate property restitution. Today, as programmes for return and restitution have been applied in more diverse contexts and circumstances, it is time to reflect on the Principles and reinterpret them in the light of such practices.

27. The Principles, in their specific formulation and the mechanisms suggested to determine claims over property or land, are not entirely clear on the recognition of all forms of tenure rights. While some take an expansive view of the Principles,[43] others have criticized them as being overly focused on individual property ownership and contexts of formal and registered claims. By referring "the rights of tenants and other non-owners" in a separate provision (principle 16), the Principles may be seen to question whether these are on an equal footing with individual property owners. Equally, the call in the same principle for mechanisms of property restitution to recognize, "to the maximum extent possible", those with rights to housing and land other than formal ownership needs clarification, although it could be seen as a practical suggestion rather than implying limitations to the entitlements of non-owners.[44]

28. The Principles must also be read against the particular context in which they were developed. While drawing on a number of sources, they were shaped by the experience of formal restitution mechanisms operating at the time, in particular in Bosnia and Herzegovina — a context of largely formal registration of private

[41] See comments on the report of the Special Rapporteur (A/HRC/16/42/2010) by delegations supporting this view, Human Rights Council, sixteenth session.

[42] The Special Rapporteur notes the categorization used among humanitarian agencies of "six tenure options", an acknowledgment of the need to also address other forms of tenure. United Nations and Shelter Centre, *Shelter after Disaster* (2010), p. 107.

[43] Langford and Moyo, "Right, remedy or rhetoric?", pp. 148 and 149 (see footnote 15 above).

[44] See also recognition of the possessory rights of traditional and indigenous communities, principle 15.3, separate from principle 16.

property and of what Yugoslav law called "socially-owned" apartments.[45] The restitution mechanism in Bosnia and Herzegovina, like others, has been criticized for doing little for those who did not own property or did not have recognized formal titles to them, and for being unable to deal with complex, informal systems of tenure with a plurality of customary, state or religious laws.[46]

29. The Special Rapporteur suggests that housing and property restitution must be understood as the restitution of any right to tenure related to housing or land prior to disaster, irrespective of tenure status or whether the land or housing is formally registered. An example of such an approach can be found in the South Africa Restitution of Land Rights Act, and in recent operational guidance on durable solutions.[47] Without pre-empting deeper discussion and clarification of their provisions, the Pinheiro Principles should be systematically viewed to embrace a wide ambit of situations and tenure rights. A number of elements in the Principles already point to an appropriately expansive conception of restitution, such as the systematic use of the term "housing, land and property" rather than only property.[48]

30. This more expansive view of restitution is grounded in the State obligations associated with the right to adequate housing to respect and ensure tenure security for all, irrespective of the form of tenure. The approach recognizes all those who are not individual owners of formally registered property as rights-holders. While post-disaster and post-conflict needs will vary with the context, the typology of human rights duties remains the same. Property restitution should be viewed and implemented in this light.

31. The practical implications of this expansive view of restitution as part of the right to remedy should be further examined with a view to articulating guidance on various scenarios.[49] For the purpose of the present report, however, and bearing in mind the qualified assessment of the Pinheiro Principles with respect to disaster situations (see section II above), property restitution will more often than not be a condition for return and other durable solutions, not a legal remedy. Understanding the equal legitimacy of all forms of tenure is thus not only relevant to restitution but even more so to efforts to ensure durable solutions and recovery. In such cases, States, with international organizations, must assess the tenure rights of all people affected by disasters and take measures to protect and ensure secure tenure post-

[45] See http://www.ohr.int/plip; Norbert Wühler and Heike Niebergall), eds., *Property Restitution and Compensation: Practices and Experiences of Claims Programmes* (Geneva, International Organization for Migration, 2008).

[46] Rhodri Williams, "Post-conflict property restitution in Bosnia: balancing reparations and durable solutions in the aftermath of displacement", presented at TESEV International Symposium on internal displacement in Turkey and abroad, Istanbul, December 2006; Conor Foley, Ingunn Sofie Aursnes, "Land, housing and property restitution after conflict: principles and practice", *Humanitarian Exchange Magazine* (2005), p. 2. Norwegian Refugee Council, on Afghanistan's special property restitution court, 2005.

[47] Office of the President, No. 22 of 1994, Restitution of Land Rights Act, chapter I (1) xi; Inter-Agency Standing Committee, *Framework on durable solutions for internally displaced persons* (Washington D.C., The Brookings Institution, 2010), p. 35.

[48] See also principles 8 and 15.2; E/CN.4/Sub.2/2005/17/Add.1, para. 62; Langford and Moyo, "Right, remedy or rhetoric?" (see footnote 15 above).

[49] Including situations whereby tenure rights are solely based on use, or whereby restitution is materially impossible, such as in cases where tenants are unable to return to their places of residence, or the original sites have disappeared or been declared *non-aedificandi* after the disaster.

disaster, whether at a former place of residence or elsewhere, should people be unable or unwilling to return.[50] Furthermore, the principle of non-discrimination and equality requires States and international organizations to prioritize assistance to those with most insecure tenure and strengthen tenure security for those with weak, ambiguous or vulnerable tenure, a responsibility often overlooked in relief and recovery efforts.

B. Recognizing tenure rights in practice, for the purpose of durable solutions

32. International agencies have shown reluctance to invest in places of return or relocation where land tenure is unclear and where legal and customary arrangements under which claims regarding ho[illegible]ing or land may fall are diverse and at times conflicting. In that respect, reconstruction in urban areas might be particularly challenging since the areas they are often characterized by complicated land ownership and tenure issues.

33. This mindset is evident among many organizations operating in Haiti. As evident in one assessment:

> The condition of land markets is chaotic and essentially lawless. Land ownership records are non-existent or ambiguous. Lack of clear title to a plot of land or written approval from a verified owner makes it difficult to supply a potential beneficiary with a new house or to support re-occupancy of prior homes.[51]

Clearly, this has been one of the reasons for the delay in reconstruction and return in Haiti. Similarly, in the aftermath of the Indian Ocean tsunami, the promulgation of contradictory policies and restrictions on land use at various levels of government and the contention surrounding these were said to have created obstacles to international recovery work and severely undermined efforts to pursue disaster risk management.[52]

34. Against this backdrop it is important to differentiate between two tasks. In the long term, there might be a need to formally record and strengthen ownership or tenure through legal reforms and other mechanisms such as land titling, thereby definitively resolving the ambiguous and uncertain situation in which many find themselves. In the short term, however, these means may not be the most appropriate to address reconstruction and recovery needs and to do so without

[50] Importantly, someone's right to tenure is not dependent on the actual reoccupancy of a former place of habitual residence.

[51] International Housing Coalition, "Haiti shelter sector assessment: one year after the earthquake" (April 2011), p. 12.

[52] Telford and Cosgrove, *Synthesis report*, p. 102 (see footnote 29 above); and Ian Christoplos, *Links between Relief, Rehabilitation and Development in the Tsunami Response: a Synthesis of Initial Findings* (London, Tsunami Evaluation Coalition, 2006), p. 71.

reinforcing inequalities.[53] Experience also suggests the enormous challenge of attempting to deal with the full spectrum of ownership/tenure and land reform issues right after disaster or conflict. The Government of Pakistan noted that an appreciation of the social, political, technical and legal complexities of land tenure issues and the fact that those were not confined to the disaster-affected areas was essential.[54] In the short term, it remains nonetheless essential and opportune to assess pre-disaster tenure rights, through swift methods, in order to move effectively towards reconstruction and recovery in a way that ensures a minimum of tenure security to everyone and addresses some of the worse forms of inequality and insecurity.

35. The optimal means for determining housing or land claims for the purpose of reconstruction and return will depend on the particular context, in terms of tenure or property arrangements, formality and registration, and resources. As discussed, formal administrative or judicial property restitution mechanisms might not be applicable or appropriate in a number of situations, in particular those characterized by multiple tenure arrangements.[55] The Protocol on the Property Rights of Returning Persons of the International Conference on the Great Lakes Region offers a more comprehensive approach than the Pinheiro Principles in this regard, by providing that both administrative and traditional authorities should address property disputes, thereby acknowledging the importance of traditional and customary systems with regard to land.[56] The Protocol also envisages alternative and informal community-based mechanisms for resolving disputes, using requirements of proof of ownership based upon testimony.[57] In practice, organizations supporting return of refugees or displaced persons have often relied on customary law and traditional conflict resolution mechanisms to solve land disputes.[58] Caution must however be exercised so that women or others particularly vulnerable to discrimination are not excluded or disadvantaged in these processes.

36. One step further are "community" or "participatory" enumeration practices. Such participatory processes have been implemented in various countries for various aims, for instance to determine and strengthen tenure rights in informal settlements or for land adjudication.[59] In the absence of land records, in case of their destruction following disaster, or in context of multiple tenure arrangements,

[53] With respect to Haiti, it was commented that "a strict asset-replacement approach to housing provision and a rush to confirm property rights … will not be appropriate to meet the housing needs of the majority of the affected population who are tenants and squatters rather than owners". A proposal to move quickly with the implementation of a cadastre was considered inappropriate, with the potential to "reinforce biases towards the most established and powerful formal owners able to produce documentation". Kate Crawford and others, "Coordination and the tenure puzzle in Haiti", *Humanitarian Exchange Magazine* No. 48 (2010), p. 8.

[54] Comments received on an earlier draft. Similarly, the Government of Timor-Leste chose a long time frame to address land issues. Comments by Timor-Leste on the report of the Special Rapporteur (A/HRC/16/42), 8 March 2011.

[55] Formal special mechanisms are also resource- and time-consuming. See Kosovo property agency annual report, 2010.

[56] International Conference on the Great Lakes Region, Protocol on the Property Rights of Returning Persons (Great Lakes Protocol), 2006, article 4.

[57] Great Lakes Protocol, article 4 (3).

[58] See A/HRC/16/42, paras. 44 and 45 (on Timor-Leste); and Foley and Aursnes, "Land, housing and property" (see footnote 46 above).

[59] United Nations Human Settlements Programme, *Count Me In: Surveying for Tenure Security and Urban Land Management* (Nairobi, 2010).

community enumerations offer promising and flexible alternatives to identify the state of occupancy and tenure pre-disaster or pre-conflict, thus ensuring a certain level of certainty and security of tenure in informdurable solutions. Community enumeration projects were implemented in the wake of the Indian Ocean tsunami,[60] and have been started in Haiti. Lessons should be drawn from experience in defining key elements and prerequisites of successful community mapping processes, applied to post-disaster situations, including their relationship with more formal or Government-led validation or land management processes, and the need to complement them with conflict resolution mechanisms.[61]

37. While mechanisms to assess, respect and strengthen tenure security post-disaster will differ depending on the context, they must in any event be guided by human rights principles, such as participation of affected communities and gender equality.

V. Disasters as opportunities — for whom?

38. It is often said that disasters, by creating a "clean slate", offer major opportunities to launch into wide scale reforms and ambitious redevelopment. Disasters offer opportunities, but also serious risks, for the protection and promotion of human rights. The Special Rapporteur is concerned that in some cases, major redevelopment efforts, while benefiting some, have, by commission or omission, overlooked the most vulnerable and in fact violated key elements of the right to adequate housing.

A. From the redevelopment of coastal areas and cities to outsourcing reconstruction

39. The 2004 Indian Ocean tsunami was seen by many as providing major opportunities for redevelopment, sometimes under the guise of public safety and disaster risk mitigation. In the tsunami's aftermath, zones prohibiting housing reconstruction along the coast (buffer zones) were in fact introduced in a number of countries affected by the tsunami; they ranged from 100 to 500 metres and, in some cases, if implemented fully, would have required the relocation of over 100,000 houses.[62] The zones were purportedly declared to protect residents from future disasters. They also had major impacts on the livelihoods of residents, especially those who relied on the sea for a living.

40. At the same time, ambitious plans for "redevelopment" and luxury tourism emerged, including for those coastal areas closed off to residents for safety reasons. One tourism board announced at the time that the tsunami offered an opportunity to make of its country a "world class tourism destination".[63] It was reported that while

[60] Ibid. (on Aceh, Indonesia), pp. 79-83; and Harper *International Law*, p. 209 (see footnote 9 above).

[61] *See World Reconstruction Conference: Recovering and Reducing Risks*, pp. 33 and 34 (see footnote 32 above).

[62] Oli Brown and Alec Crawford, "Addressing land ownership after natural disasters: an agency survey", 2006, p. 6; and Human Rights Watch, "After the deluge: India's reconstruction following the 2004 tsunami", p. 41. Some of the most important restrictions were ultimately abandoned.

[63] Tourism Concern, "Post-tsunami reconstruction and tourism: a second disaster?", 2005.

displaced persons were prohibited from returning to their homes, the same prohibition did not apply to hotel complexes. In some places, land developers simply used the opportunity to grab land, especially from the most vulnerable communities. Luxury hotels sprang up in many coastal areas. Communities and civil society organizations complained that the creation of zones was used to arbitrarily evict poor coastal dwellers and indigenous communities to the benefit of businesses and new tourism facilities.[64]

41. The destruction of much of the housing stock in New Orleans after Hurricane Katrina was also seen as an opportunity to fundamentally change the housing and urban characteristics of the city. Notably, the four largest public housing complexes in New Orleans (the "big 4"), mostly inhabited by African Americans, were demolished to give way to planned redevelopment of mixed-income communities and other uses. Although in some cases there may have been no feasible alternatives because of the severity of the damages, the demolitions were mainly justified as essential to the city's recovery and necessary for health and safety reasons.[65] Problematically, the planned developments were to include a small number of public housing units compared to the total available before Hurricane Katrina.[66] Their demolition was another obstacle preventing lower income residents from returning to New Orleans (see sect. III above).[67]

42. Concerns have also been expressed over what has been called "the business of reconstruction", whereby the planning, financing and implementation of reconstruction are outsourced to private companies. In some cases, outsourcing reconstruction without putting adequate safeguards in place has been associated with negative impacts on the adequacy and affordability of reconstruction as well as on people's ability to participate in and benefit from reconstruction efforts. In Chile, following the earthquake and subsequent tsunami of February 2010, the private sector reportedly played a central role in the reconstruction of urban centres and coastal areas. Following one of the main principles of the national reconstruction plan, families have the choice to decide whether to rebuild their homes on the same sites of the collapsed buildings or to acquire a previously existing or a newly built house. However, as housing reconstruction was supported mainly by subsidies attached to individual property, private constructors preferred to rebuild housing in new areas on the outskirts of towns, rather than the central areas from which many people had been displaced, where land and housing prices were much higher.[68] Real estate companies were also said to pressure families to sell land and housing at very

[64] Action Aid, "Tsunami response", pp. 17 and 18 (see footnote 30 above); Malcolm Langford and Jean du Plessis, "Dignity in the rubble? Forced evictions and human rights law"; and Brown and Crawford, "Addressing land ownership" (see footnote 62 above).

[65] Julia Cass and Peter Whoriskey, "New Orleans to raze public housing", *Washington Post*, 8 December 2006.

[66] Amnesty International, "UN-Natural disaster: human rights in the Gulf coast", 2010, p. 6; and Advisory Group on Forced Evictions, Mission report, pp. 5, 28-32 (see footnote 35 above).

[67] A/HRC/13/20/Add.4, para. 30. The Special Rapporteur welcomes the information received from the Government, as well as the fact that, owing to a combination of housing policies, there are now more housing subsidies beneficiaries in New Orleans than prior to Hurricane Katrina.

[68] 2011 report on the earthquake-tsunami of 27 February 2010 and the reconstruction process in Chile, prepared for the Special Rapporteur on the right to adequate housing by Habitat International Coalition, Habitat for Humanity, the Housing Institute of the Faculty of Architecture and Urbanism, the Observatory of Reconstruction, "Sur Maule", "Let's build" and "Observatory and Housing" networks.

low prices in a moment where they were very vulnerable, in order to make way for private redevelopment.[69] This shows that if left only to the market, new housing for the poorest will likely be in the peripheries.

43. Similar distortions were seen with respect to the construction market. In one case, it has been reported that in some cities a few companies were given a monopoly over construction materials, to the detriment of local small businesses, and in another, the reconstruction process led to increased prices by suppliers and construction companies, stymying individual reconstruction efforts.[70] Likewise, the outsourcing of transitional shelters by humanitarian agencies to international contractors might divert potential financial resources for displaced persons who could be supported to build their own shelter. The results in the latter instances are also less likely to be culturally appropriate.[71]

B. Acting with due diligence to protect the right to adequate housing

44. In the examples discussed above, post-disaster reconstruction has had negative impacts on the poorest. In the worst cases, disasters provided a clean slate and excuse for powerful actors to destroy housing or grab land, which would not have been possible in the pre-disaster context, where legal procedures would have had to be followed and affected households consulted and given access to remedies. At best, States did not adequately monitor the operation and regulation of the post-disaster housing and reconstruction markets, nor did they take measures to ensure that people retained access to affordable housing and were not in effect forced to leave their places of origin. While nothing prevents States from asking for the support of private companies in reconstruction efforts — and indeed private sector contributions can be essential to recovery — Governments must be mindful of their role to monitor private sector delivery and ensure that reconstruction does not benefit only a privileged few to the detriment of others.

45. Such examples could be seen as "constructive forced evictions".[72] In such cases, international standards pertaining to forced eviction or arbitrary displacement apply. When forced eviction has been proved, people should have access to remedies, including to a fair hearing, access to legal counsel and to receiving reparation, such as housing or land restitution, adequate compensation, or alternative housing/land if they so choose.[73]

46. In cases where public security and safety concerns are legitimate and compelling, decisions over land use or housing regulations must nonetheless be subject to human rights standards — in particular the strict procedural requirements

[69] Ibid.

[70] Ibid; see also A/HRC/13/20/Add.3, para. 25.

[71] See by contrast the success of "owner-driven approaches" to reconstruction. World Reconstruction Conference: Recovering and Reducing Risks, pp. 25-27 (see footnote 32 above).

[72] Malcolm Langford, "The right to return and resettlement after the tsunami disaster", *Disaster Brief*, vol. 2 (2) (July-September 2005). The term "constructive eviction" is used in some countries to describe actions or omissions by a landlord that make the premises unhabitable or unsuitable for the purposes for which they were leased.

[73] Committee on Economic, Social and Cultural Rights, General Comment No. 7, General Assembly resolution 60/147, entitled "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law; and the Pinheiro Principles.

relating to the conduct of evictions, the right to redress and remedy and an opportunity for judicial review, and the economic, social and cultural rights of affected communities. Evictions should not result in individuals being rendered homeless. Where those affected are unable to provide for themselves, the State must take measures to ensure that alternative housing, resettlement or access to productive land is available.[74]

47. Restrictive measures must also conform to the principle of proportionality.[75] This calls for a balancing act between the rights of those affected with the interests of the State in mitigating the damage and ensuring public safety.[76] With respect to tsunami prevention for instance, any regulation preventing residents from returning to beachfront areas must be shown to be the least restrictive means of achieving public safety objectives. A State would have to show that other safety measures such as warning systems or dykes are not available or effective.[77]

48. Finally, experience with respect to land use restrictions compels consideration of a range of factors, including that resettling people involves large costs in terms of infrastructure and services and may also severely disrupt people's livelihoods and community lives.[78] Settlement and housing patterns are not random but reflect a specific economic and social fabric that may be difficult to replicate elsewhere. Thus, both human rights standards and an assessment of the social and economic costs of displacement call for a more restrictive approach to the application of land/housing use restrictions.

VI. Recovery and durable solutions: addressing all aspects of the right to adequate housing

49. Beyond the more obvious protection aspects discussed above, it is important to address reconstruction from a broader view of adequate housing — including seeing housing as a social asset — and with the aim to progressively realize the right. Ensuring recovery and durable solutions, seen in this light, means rebuilding communities and neighbourhoods and ensuring an adequate standard of living, of which housing unit construction is only one part, sometimes not the most important or urgent.[79] Disasters do not take place in a vacuum: it is important to assess and address the wider housing context in which disasters take place.

[74] General Comment No. 7, para. 16. Inter-Agency Standing Committee Guidelines, C.2.4, C.2.5.

[75] Human Rights Committee, General Comment No. 27, on freedom of movement.

[76] "Protection of internally displaced persons in natural disasters: a working visit to Asia by the Representative of the Secretary-General on the human rights of internally displaced persons", Walter Kälin, 2005, p. 22.

[77] Langford, "The right to return and resettlement" (see footnote 72 above).

[78] World Bank, *Hazards of Nature, Risks to Development: an IEG Evaluation of World Bank Assistance for Natural Disasters* (Washington, D.C., 2006); Active Learning Network for Accountability and Performance in Humanitarian Action, "Responding to earthquakes, 2008: learning from earthquake relief and recovery".

[79] Inter-Agency Standing Committee, *Framework on Durable Solutions* (see footnote 47 above). Lessons could be drawn from good development practices on resettlement, for instance: Michael Cernea and Christopher McDowell, eds., *Risks and Reconstruction: Experiences of Resettlers and Refugees* (Washington, D.C., World Bank, 2000).

A. Undue focus on houses and property

50. Post-disaster situations are likely to be characterized not only by massive damage to housing but also by mass displacement, disruption of social networks and relationships, damage or lack of access to basic services and loss of livelihoods, employment, assets, or land, which are all key factors that have an impact on enjoyment of the right to adequate housing. However, reconstruction and efforts to ensure durable solutions have too often focused on the most tangible aspects of housing (the physical structures). International organizations and Governments are prone to assume that housing reconstruction is the main priority for affected persons, rather than livelihoods or neighbourhood infrastructure.[80] When housing is assessed it is assessed as a technical or economic sector rather than as a human right, and the focus is on building and construction standards and materials, and on the quality of emergency and transitional shelters. In some cases the focus on property restitution has also been to the detriment of rebuilding and improving the broader social, political or economic conditions required to support sustainable return — jobs, basic services and infrastructure, and security. A commentator stated that, the "house" had become the measure of success of the return process rather than the actual welfare of the people displaced from their homes.[81]

51. The well-known slogan, "Build Back Better", seems to, and certainly should, aspire to address the broader living conditions of affected communities. The special envoy of the Secretary-General to the Indian Ocean tsunami noted that the financial resources, international focus and openness to political and policy reform that often characterized a post-crisis period should allow for "build back better" and break out of inequitable development patterns in a sustained way.[82] Similar calls were made to consider the Pakistan floods as "an opportunity to build back better lives and to step up to the task of bringing dignity to the millions who live on the margins of society".[83] However, implementing this inspiring idea is often reduced to its most technical meaning, for instance building houses using flood- and seismic-resistant standards.[84]

52. By contrast, a number of reconstruction projects worldwide have attempted to see the reconstruction process "as an opportunity to promote a local development process" rather than being limited to restoring pre-disaster conditions — the participation of communities being essential in that regard.[85]

[80] See for instance, with reference to housing construction in Indonesia, Lyons and Shilderman, eds., *Building Back Better*, p. 157 (see footnote 30 above).

[81] Megan Ballard, "Post-conflict property restitution: flawed legal and theoretical foundations, *Berkeley Journal of International Law 462* (2010) (with respect to Bosnia and Herzegovina).

[82] United Nations Special Envoy for Tsunami Recovery, "Key positions for building back better" (see footnote 33 above).

[83] Government of Pakistan, Asian Development Bank and World Bank, *Pakistan Floods*, p. 7 (see footnote 25 above).

[84] Ibid., pp. 22 and 94.

[85] See for instance projects in Peru: Lyons and Shilderman, eds., *Building Back Better*, pp. 307-344 (see footnote 30 above).

B. Addressing the wider context in relief and recovery efforts

53. As mentioned above, the earthquake in Haiti highlighted the largely inadequate housing conditions and the precariousness and insecure tenure of informal settlements. The international community, by focusing on people displaced in camps, and by offering conditions superior to those enjoyed by many Haitians, inadvertently made camps attractive places. While systematic reconstruction accompanied by the provision of services in neighbourhoods of return is not forthcoming, there is thus little reason for poor families to leave the camps where housing and services are provided free of charge. Although understandable from an emergency perspective, a narrow focus on the plight of internally displaced persons and temporary solutions becomes, amidst a difficult socio-economic and tenure context, an obstacle to long-term recovery, and in some cases may result in further development problems.[86] Such situations are bound to become more frequent, with increased urbanization, much of which occurs in an unplanned manner (see A/64/255, paras. 13-21).

54. The situation in Haiti also serves as an example of the challenges facing the basic rationale for reconstruction and property restitution: in contexts characterized by massive poverty and grossly inadequate living and housing conditions, the question remains as to whether the final goal of reconstruction should be to provide high-quality houses for those who lost their dwellings in the disaster. The Special Rapporteur believes that interventions must instead aim to progressively realize the right to adequate housing for all. In Haiti, reconstruction and recovery have less to do with the construction of new houses for individuals directly affected by the disaster than with the improvement of the overall living and housing conditions in the unplanned and unserviced settlements affected by the disaster. The approach should thus focus on settlements and communities, not individual constructions, and the aim to create places where people can have an adequate standard of living.

55. Land use planning post-disaster can be a powerful instrument to provide both a reference for reconstruction and a legal basis for action in the immediate aftermath of a disaster. Post-disaster zoning can recognize de facto settlements, opening ground for investment in infrastructure and upgrading of hitherto unserviced and unplanned settlements in order to facilitate return and reconstruction.

56. From a human rights perspective, investment in upgrading settlements characterized by grossly inadequate living conditions as part of disaster response is not only legitimate but also indispensable, bearing in mind the obligation of non-discrimination and attention to the most vulnerable. Moreover, for principled and pragmatic reasons, in a number of contexts it would be important to address the situation from a longer-term perspective: in the context of Haiti, this means a focus on improving conditions in settlements not damaged by the disaster (provided they are not in disaster-prone areas) but with the same urbanistic and vulnerability characteristics as those affected by it.

[86] The case of "Camp Corail" at the outskirts of Port-au-Prince epitomizes such difficulties. Intended as a temporary camp for the displaced living in areas most at risk, it has attracted people from everywhere and has been transformed within a few months into a new informal settlement, with at least 50,000-60,000 residents as of May 2011.

C. Disconnect between emergency and long-term recovery

57. The above examples also illustrate the existing disconnect between the emergency phase and longer-term recovery, as well as the difficulties of the international community, in many contexts, to manage the transition from one to the other.[87]

58. A focus on individual beneficiaries and on "deliverables" — food, shelters, health kits — as ends in themselves might divert from the fundamental responsibility to respect, protect and fulfil rights (to housing, water, health, for instance), and the requirement to think of the long term. In Haiti, it was reported that immediate needs had dominated the international community's response and that specific pledges to support permanent housing requirements had therefore been less significant.[88] The Haiti Shelter Cluster of the Inter-Agency Standing Committee reported on the risks of institutionalizing camps and of consuming scarce resources in emergency measures at the expense of more durable permanent solutions were recognized.

59. Similarly, the massive construction of transitional shelters might not always be required or appropriate and in some cases might impede durable solutions, such as in dense, urban settings where people might be prevented from incrementally building permanent housing due to lack of space. The production of these shelters might unintentionally divert resources from the reconstruction of permanent housing and neighbourhoods, in a context of diminishing attention and aid flows over time.[89] It is thus not uncommon, regrettably, for people to live in transitional shelters many years following a disaster (see A/HRC/13/20/Add.4, para. 31). States and international organizations should not automatically assume the need for transitional shelters without considering whether alternative solutions can be supported.

60. Many have made the call for an integrated approach to ensure a continuum of aid between relief and recovery. In the previous report (A/HRC/16/42) to the Human Rights Council, the Special Rapporteur discussed some of the funding issues associated with the issue. The Special Rapporteur would like to encourage donors to support durable solutions and recovery at the earliest time possible and to help to ensure a continuum of aid, including by funding that can be flexible enough to do so.

VII. Conclusion

An approach to disaster response deliberately and comprehensively integrating the right to adequate housing

61. **Integrating the right to adequate housing into disaster response has broad implications. In practice, however, comprehension of the right to adequate**

[87] John Holmes, "Learning the lessons of Haiti", *Humanitarian Exchange* No. 48 (October 2010), p. 3.

[88] United States of America strategy entitled "Post-earthquake United States Government Haiti strategy: towards renewal and economic opportunity" (2011).

[89] In Haiti, a T-shelter costs $2,500 on average, while the cheapest estimates for permanent housing are around $3,500 per house.

housing and its application to disaster response has been limited to only some aspects of the right, most notably linked to physical structures and individual property ownership. In some cases, reconstruction and recovery efforts — by omission or commission — have had a detrimental impact on victims of disasters and their enjoyment of the right to adequate housing.

62. In the view of the Special Rapporteur, making comprehensive efforts to realize the right to adequate housing in reconstruction efforts is not only an obligation but also an opportunity. While disaster response will not — and should not — replace development efforts, it provides an occasion to redress the inequalities that either exacerbated the natural disaster's impacts or were made visible by it, and to contribute to efforts to progressively realize the right to adequate housing for all, notably by improving tenure security.

63. The recommendations below outline the fundamental elements of an approach to disaster response that is fully based on the right to adequate housing. They are meant to complement existing guidance when it comes to ensuring protection and realization of the right to adequate housing. Unless stated otherwise the recommendations are addressed to Governments, and international donors and organizations. Finally, recommendations for follow-up are provided, bearing in mind that the framework only outlines general principles that will need to be further refined and operationalized.

VIII. Recommendations

64. The Special Rapporteur makes the following recommendations:

A. General framework: disaster response based on the right to adequate housing

Overarching principles

1. Right to adequate housing

In all phases of disaster response the right to adequate housing should be respected and protected. It should be understood as the right to live in safety and security, in conditions deemed adequate on grounds of security of tenure; availability of services, materials, facilities and infrastructure; affordability; habitability; accessibility; location; and cultural adequacy.

2. Security of tenure

The multiplicity of forms of tenure should be recognized equally and Security of tenure should be ensured for everyone post-disaster.

3. Participation

- All affected persons and groups should have access to information and be able to participate meaningfully in the planning and implementation of the various stages of the disaster response.

- **In particular, all affected persons and groups should have the opportunity to participate in the identification and determination of tenure rights; the choice over, planning and implementation of transitional shelter and permanent housing programmes, and of durable solutions (return, local integration, resettlement); and in decisions over land use planning and restrictions.**

- **Women's participation must be ensured.**

4. **Non-discrimination and vulnerability**

- **In post-disaster needs assessments (for both emergency and recovery), pre-disaster inequalities and vulnerabilities should be identified, whether based on race, socio-economic status, tenure, gender or any other relevant grounds.**

- **In recovery plans, programmes should be devised to specifically address inequalities identified.**

- **Special measures should be taken to redress discrimination and ensure the realization of the right to adequate housing for the most disadvantaged groups, including through measures to strengthen tenure security for those with insecure status and/or through the prioritization of housing reconstruction and the provision of alternate housing, such as social or public housing, for the most vulnerable.**

Operational principles

1. **Equal rights to shelter and housing**

- **All affected persons, irrespective of their tenure status pre-disaster, should have equal rights to shelter in the emergency and transitional phases.**

- **Shelter and housing must fulfil the requirements of adequacy in international human rights law.**[90]

2. **Do no harm**

No harm should be caused by or to others in respecting and protecting the right to adequate housing, including tenure security:

- **Existing land, housing and identity records should be protected.**

- **Housing, land and property should be protected from further damage or destruction.**

- **States must prohibit and sanction forced evictions by Government and private actors alike.**

- **Health and safety regulations as well as disaster risk reduction measures, which may call for land use or housing restrictions, must be subject to human rights standards: their impacts on the human rights of individuals and communities must be assessed, and due process rights, and the rights to information and participation, must be upheld in all circumstances.**

[90] See overarching principle No. 1.

- Efforts must be made to ensure that humanitarian and shelter assistance, as well as the restitution laws, mechanisms and institutions that may emerge in post-disaster situations, do not intentionally or by default discriminate on the basis of tenure status.

3. Tenure of "non-formal owners"

The tenure rights of "non-formal owners", namely those without individual, formally registered, property ownership, should be honoured:

- All pre-disaster tenure rights, including in disaster damage and needs assessments, should be assessed and recorded.
- In contexts where property and ownership are not formally registered, fast-track mechanisms to determine tenure rights, notably community-led processes (community enumeration), should be considered an essential element of and prerequisite to the implementation of restitution, reconstruction and recovery programmes.
- Housing and property restitution must be understood as the recognition and restitution of all tenure rights to housing or land.
- For those with insecure tenure, measures should aim at strengthening their security of tenure, for instance by granting rights to housing or land at places of origin, either immediately or in incremental stages. When restitution or return is not desirable for the affected persons or is not possible owing to land having disappeared or to compelling safety reasons that prevent the return, alternative housing or land should be granted at another location.
- Measures must be taken to support the repossession of or alternative access to adequate housing or land for all non-formal owners, with a particular focus on the most vulnerable.

4. Context of relief and recovery programmes

Relief and recovery programmes should be addressed within the overall housing context (of an area/city/country):

- In post-disaster needs assessments, major pre-disaster impediments to the realization of the right to adequate housing should be identified, as should the impact of pre-disaster situations on durable solutions and the recovery process.
- The broader housing situation, including unplanned and unserviced settlements, should be addressed through targeted programmes in conjunction with programmes for disaster response and with a focus on the most vulnerable populations.

5. Rebuilding communities

Communities and settlements, not just houses, should be rebuilt or resettled:

- Reconstruction should not only apply to physical structures but should also include or prioritize, as appropriate and according to the needs and

requests of affected persons, the rebuilding or setting up of basic infrastructure and services and the upgrading of settlements.

- Community structures and networks, to the extent that they respect international human rights standards including on gender equality, should be deliberately preserved and supported.

6. Compliance with international standards

If return is impossible because the land has disappeared or there are objective safety grounds preventing return, of if it is not desired by the affected individuals or groups, resettlement and local integration conditions must comply with international human rights standards and guidelines pertaining to adequate housing, evictions and displacement.

7. Disaster risk reduction legislation

States must adopt disaster risk reduction legislation that respects the right to adequate housing. Special attention must be given to those who may face discrimination and exclusion, including on the grounds of tenure status, and measures must be devised to protect them.

B. Recommendations for follow-up

1. United Nations agencies and mechanisms, the Inter-Agency Standing Committee or organizations that are members of or cooperating with it, should consider undertaking further research on the practical integration of the right to adequate housing in disaster response, taking as a starting point the framework proposed by the Special Rapporteur.

2. Further work should be conducted on:

- The mechanisms to support the fast-track determination of tenure rights, including community mapping and enumeration, drawing lessons from existing practices to advise on their essential features and application in post-disaster situations.

- The legal and practical measures needed to support, in post-disaster situations, all those who are not individual owners of formally registered property.

- Territorial planning and land use instruments and tools and their potential to provide a technical and legal foundation for return and reconstruction programmes.

- The access to use and control over land in situations of natural disasters, including conditions for land requisition and acquisition for shelter/settlement.

3. In their examination of State reports and country visits, United Nations human rights mechanisms should assess and make recommendations on the enjoyment of specific human rights in natural disaster situations, as well as the extent to which disaster prevention, relief and recovery efforts contribute to their enjoyment.